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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/507,231

09/09/2004

Rona L. Reid

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The Dow Chemical Company
Intellectual Property Section
P.O. Box 1967
Midland, MI 48641-1967

EXAMINER

KHAN, AMINA S

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

03/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/507,231	Applicant(s) REID ET AL.	
	Examiner AMINA KHAN	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 7, 2008 has been entered.

2. Claims 1-20 are pending. Claims 1,4 and 11 have been amended.

3. The rejection of claims 1-4,7,9-16,18 and 19 under 35 USC 102(e) or under 35 USC 103(a) over Heffelfinger (US 2002/0081423) is withdrawn.

4. All other prior rejections are maintained.

Claim Objections

5. Claim 8 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper

dependent form, or rewrite the claim(s) in independent form. Claim 8 does not further limit claim 1.

Response to Arguments

6. Applicant's arguments filed regarding Stutz (US 3,396,529) have been fully considered but they are not persuasive. The examiner argues that Stutz et al. are directed towards highly elastic articles comprising polyolefins and clearly teaches the desire to produce articles which resist elongation or tensile stress and resume their original shape and length as quickly and as completely as possible after relation of the stress (column 1, lines 25-35). Applicants arguments regarding the transformative nature of the treatments is conclusory and is not supported by experimental data. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972).

Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324. The burden is on applicants to show product differences in product by process claims, see *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman*, 180 USPQ 324 (CCPA 1974); *In re Brown*, 173 USPQ 685 (CCPA 1972).

7. Applicant's arguments filed regarding Ho et al. (WO 99/63021) have been fully considered but they are not persuasive. The examiner argues that Ho et al. are directed towards homogeneously branched ethylene polymers which retain good elasticity after laundering and at elevated temperatures (abstract; page 8, paragraph 3). The examiner would expect a similar substrate which is taught to have good elasticity after laundering and at exposure to elevated temperatures to be transformed similarly to that of the elastic instantly claimed. Applicant's arguments regarding the difference in transformation of the treated instantly claimed substrates vs. the prior art substrate is conclusory and is not supported by experimental data. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972).

Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324. The burden is on applicants to show product differences in product by process claims, see *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman*, 180 USPQ 324 (CCPA 1974); *In re Brown*, 173 USPQ 685 (CCPA 1972).

Art Unit: 1796

8. Applicant's arguments filed regarding Dutta et al. (US 5,529,830) have been fully considered but they are not persuasive. The examiner argues that Dutta et al. are directed towards knit or woven fabrics made from polyolefins to provide elastic fabrics which are laundering for 77-105 cycles (examples 1,2 and 3). The examiner would expect a similar substrate which laundered for a similar number of cycles to be transformed similarly to that of the elastic instantly claimed. Applicant's arguments regarding the difference in transformation of the treated instantly claimed substrates vs. the prior art substrate is conclusory and is not supported by experimental data. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972).

Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324. The burden is on applicants to show product differences in product by process claims, see *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman*, 180 USPQ 324 (CCPA 1974); *In re Brown*, 173 USPQ 685 (CCPA 1972).

9. Applicant's arguments filed regarding Knight et al. (US 6,140,442) and Maugens (US 6,194,532) have been fully considered but they are not persuasive. The examiner

Art Unit: 1796

argues that Knight et al. and Maugens et al. are directed towards highly elastic homogeneously branched ethylene polymers. The examiner would expect similar substrates taught to have high elasticity to possess similar properties to the substrate of the instant claims. Applicant's arguments regarding the transformative nature of the treated instantly claimed substrates vs. the properties of prior art substrate is conclusory and is not supported by experimental data. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972).

Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324. The burden is on applicants to show product differences in product by process claims, see *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman*, 180 USPQ 324 (CCPA 1974); *In re Brown*, 173 USPQ 685 (CCPA 1972).

10. Applicant's arguments filed regarding Knight in view of Chi (US 6,666,235) have been fully considered but they are not persuasive. The examiner argues that Knight et al. and Chi et al. are both directed towards durable blends of polyolefins and cotton. It would have been obvious that the compositions of Knight could be used to produce

Art Unit: 1796

denim because the compositions have a similar combination of fibers which are common in the production of denim. The examiner would expect similar substrates taught to have high elasticity to possess similar properties to the substrate of the instant claims. Applicant's arguments regarding the transformative nature of the treated instantly claimed substrates vs. the properties of prior art substrate is conclusory and is not supported by experimental data. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972).

Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324. The burden is on applicants to show product differences in product by process claims, see *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman*, 180 USPQ 324 (CCPA 1974); *In re Brown*, 173 USPQ 685 (CCPA 1972).

11. Applicant's arguments filed regarding Knight in view of "New polyolefin blend fiber makes jeans WR and quick-drying." (Daily News Record, April 1994) alone or further in view of Rodrigues (US 6,337,313) have been fully considered but they are not persuasive. The examiner argues that Knight et al. and the article are both directed

Art Unit: 1796

towards durable blends of polyolefins and cotton. It would have been obvious that the compositions of Knight could be used to produce denim because the compositions have a similar combination of fibers which are common in the production of denim. It would have been further obvious to stonewash the compositions of Knight because Rodrigues et al. teach this is a conventional step in the jeans making process, wherein the jeans comprise polyolefin and cotton blends. The examiner would expect similar substrates taught to have high elasticity to possess similar properties to the substrate of the instant claims. Applicant's arguments regarding the transformative nature of the treated instantly claimed substrates vs. the properties of prior art substrate is conclusory and is not supported by experimental data. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972).

Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324. The burden is on applicants to show product differences in product by process claims, see *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman*, 180 USPQ 324 (CCPA 1974); *In re Brown*, 173 USPQ 685 (CCPA 1972).

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMINA KHAN whose telephone number is (571)272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M. Douyon/
Primary Examiner
Art Unit 1796

/Amina S. Khan/
February 25, 2008

Application/Control Number: 10/507,231
Art Unit: 1796

Page 10